

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of the Application of
Enbridge Energy, Limited Partnership for a
Certificate of Need for the Line 3
Replacement Project in Minnesota from the
North Dakota Border to the Wisconsin
Border

**RELATOR'S
STATEMENT OF THE CASE**

**COURT OF APPEALS
NUMBER**

**MINNESOTA PUBLIC UTILITIES
COMMISSION DOCKET NO.
PL-9/CN-14-916**

1. Court or agency of case origination and name of presiding judge or hearing officer.

The case involves decisions by the Minnesota Public Utilities Commission.

2. Jurisdictional statement

(A) Appeal from district court.

Not applicable.

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Minn. Stat. §§ 216B.27, subds. 2, 5; 216B. 52, subd. 1; 14.63–.69 (2018).

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

The time limit for obtaining certiorari review is fixed by Minn. Stat. § 14.63. The Commission denied the Department's request for reconsideration of its September 5, 2018 order on November 21, 2018.

(C) Other appellate proceedings.

Not applicable.

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes (X) No ()

If yes, provide date of order:

November 21, 2018.

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes () No ():

Not Applicable

If yes, cite rule, statute, or other authority authorizing appeal:

Minn. Stat. §§ 216B.52 and 14.63 provide for appeal of an order of the Commission within 30 days after a request for rehearing pursuant to Minn. Stat. § 216B.27, subds. 2, 5, has been denied.

3. State type of litigation and designate any statutes at issue.

This appeal arises from the Minnesota Public Utilities Commission's September 5, 2018 order granting Enbridge Energy, Limited Partnership a certificate of need and its November 21 order denying reconsideration. The Commission granted a certificate of need to Enbridge for the Line 3 Replacement Project in Minnesota from the North Dakota border to the Wisconsin border, without evaluating the accuracy of a long-range energy demand forecast on which the necessity for the facility is based as required by Minn. Stat. § 216B.243 (2018) and Minn. R. 7853.0130 (2017). The Commission's rules define "demand" under Minn. R. 7853.0010, subp. 8 (2017) and "forecast" under Minn. R. 7853.0010, subp. 9 (2017).

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

Minnesota law provides that a large energy facility, including a crude oil pipeline, may not be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission. Minn. Stat. §§ 216B.2421; 216B.243 (2018). In determining

whether to grant a certificate of need, the Commission “shall evaluate . . . the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based” Minn. Stat. § 216B.243, subd. 3(1). The Commission’s rules similarly require the Commission to consider “the accuracy of the applicant’s forecast of demand for the type of energy that would be supplied by the proposed facility” Minn. R. 7853.0130 A(1). The Department opposed granting the certificate of need because the record in the proceeding does not contain a demand forecast for energy, crude oil, that would be supplied by the new Line 3. The Commission granted a certificate of need to Enbridge for a crude oil pipeline without any evaluation, or consideration, of a long-range demand forecast of crude oil as required by Minn. Stat. § 216B.243, subd. 3(1) and Minn. R. 7853.0130 A(1). The Department requests that the court of appeals determine whether the Commission’s order is affected by legal error and should be reversed and remanded to remedy the legal error. Minn. Stat. § 14.69 (2018).

In addition, Minnesota law places the burden of proving need for the facility on certificate of need applicants such as Enbridge. *See* Minn. Stat. § 216B.243, subd. 3. The Commission shifted the burden to other parties, such as the Department, to show that demand for crude oil would decrease during the forecast period. The Department requests that the court of appeals determine whether the Commission committed legal error by placing the burden of production on intervenors to introduce evidence on a statutory requirement. The Department requested that the Commission reconsider its order on these issues but the Commission declined.

5. List specific issues proposed to be raised on appeal.

Whether Minnesota law requires the Commission to evaluate the accuracy of a long-range demand forecast for the type of energy that would be supplied by a proposed facility under Minn. Stat. § 216B.243, subd. 3(1) and Minn. R. 7853.0130 A(1) and whether failure to do so in this case constitutes legal error.

Whether Minnesota law permits the Commission to shift the burden of proof to parties other than an applicant for a large energy facility to introduce a long-range energy demand forecast and evidence of lower future demand for the type of energy that would be supplied by the proposed facility under Minn. Stat. § 216B.243, subd. 3(1) and Minn. R. 7853.0130 A(1) and whether doing so in this case constitutes legal error.

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

Court of Appeals Docket Nos. A18-1283, A18-1291, A18-1292. These consolidated appeals involve an appeal of the Commission's determination of the adequacy of the environmental impact statement pertaining to the proposed project.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

Not applicable.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes (X) No ()

If yes, full (X) or partial () transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes () No (X)

If not, has it been ordered from the court reporter? Yes () No (X)

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes () No ()

Not applicable.

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No ()

Not applicable.

8. Is oral argument requested? Yes (X) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (X)

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. (X)

10. Names, addresses, zip codes and telephone numbers of attorney for relator and respondent.

RELATOR

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Department of Commerce*

Dated: December 21, 2018

RESPONDENT

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Respectfully submitted,

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**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of the Application of
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Certificate of Need for the Line 3
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North Dakota Border to the Wisconsin
Border

WRIT OF CERTIORARI

**COURT OF APPEALS
NUMBER**

**MINNESOTA PUBLIC UTILITIES
COMMISSION DOCKET NO.
PL-9/CN-14-916**

**DATE OF ORDER GRANTING
CERTIFICATE OF NEED AS
MODIFIED AND REQUIRING
FILINGS:
September 5, 2018**

**DATE OF RECONSIDERATION
ORDER:
November 21, 2018**

TO: MINNESOTA PUBLIC UTILITIES COMMISSION

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subdivision 3, within 30 days after service of the Petition for Writ of Certiorari or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits, and proceedings in the above-entitled matter so that this court may review the Minnesota Public Utilities Commission's September 5, 2018 Order Granting Certificate of Need As Modified and Requiring Filings and its November 21, 2018 Order Denying Reconsideration, Excluding Filings, and Granting Variance.

You are further directed to retain the actual record, exhibits, and transcripts of proceedings until requested by the clerk of the appellate courts to deliver them in accordance with Rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Commission or its attorney at:

Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
Suite 350
121 Seventh Place East
St. Paul, MN 55101

Lisa A. Crum
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1100
St. Paul, MN 55101

and upon the Attorney General at:

Office of the Minnesota Attorney General
Attorney General Lori Swanson
445 Minnesota Street, Suite 1400
St. Paul, MN 55101

Proof of service of the writ and of the itemized list shall be filed with the clerk of the appellate courts.

Dated: December 21, 2018

Clerk of the Appellate Courts

BY: _____
Assistant Clerk

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of the Application of
Enbridge Energy, Limited Partnership for a
Certificate of Need for the Line 3
Replacement Project in Minnesota from the
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**PETITION FOR WRIT
OF CERTIORARI**

**COURT OF APPEALS
NUMBER**

**MINNESOTA PUBLIC UTILITIES
COMMISSION DOCKET NO.
PL-9/CN-14-916**

DATE OF DECISIONS:
September 5, 2018
November 21, 2018

**DATE AND DESCRIPTION OF
EVENT TRIGGERING APPEAL
TIME:**

**Service of Order Denying
Reconsideration, Excluding Filings, and
Granting Variance on November 21,
2018**

TO: THE COURT OF APPEALS OF THE STATE OF MINNESOTA:

The Minnesota Department of Commerce petitions the Minnesota Court of Appeals for a writ of certiorari to review the Minnesota Public Utilities Commission's September 5, 2018 order granting a certificate of need ("CN Order") and its November 21, 2018 order denying reconsideration. Certiorari review is authorized by Minn. Stat. §§ 216B.27, subds. 2, 5; 216B.52, subd. 1; 14.63–.69 (2018). Copies of the CN Order

and Reconsideration Order and the Department's statement of the case are included as provided in Minn. R. Civ. App. P. 115.03.

The Department challenges the CN Order granting a certificate of need to Enbridge Energy, Limited Partnership for the Line 3 Replacement Project in Minnesota from the North Dakota border to the Wisconsin border on the ground that the CN Order is affected by legal error because Enbridge did not introduce, and the Commission did not evaluate the accuracy of, a long-range demand forecast for the type of energy that would be supplied by the proposed facility under Minn. Stat. § 216B.243, subd. 3(1) (2018) and Minn. R. 7853.0130 A(1) (2017). The Department contends the Commission erred in shifting the burden of proof from Enbridge to other parties to show that demand for the type of energy could decrease during the forecast period.

Dated: December 21, 2018

Respectfully submitted,

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